

1 based on the decline in subscribership?

2 A We had had discussions through and
3 with [REDACTED] either directly with the [REDACTED]
4 folks and/or their advertising agencies,
5 talking about the third year, which it would
6 have been, of their renewal of that particular
7 property.

8 And they talked about the fact
9 that we had had severe distribution challenges
10 that had occurred throughout this period of
11 time, and they didn't feel that the upward
12 trend was continuing, and, in fact, that we
13 were going to be declining in our footprint,
14 in our distribution.

15 Q When you say "they didn't feel,"
16 did they say that, or that's what you were
17 deriving from your conversation?

18 A No. They indicated that
19 distribution and the change in our trend and
20 our decline was a key consideration in their
21 decision.

22 Q To your knowledge, was there any

1 other reason? We have discussed a lot this
2 afternoon about various reasons why the NFL
3 Network might lose advertising revenues or
4 lose advertisers. To your knowledge, was
5 there any other reason why [REDACTED] would have
6 notified the NFL Network that it would not
7 renew its contract?

8 A No.

9 Q So you stand by the statement that
10 the sole reason was because of the move to the
11 premium tier?

12 A I stand by that in this specific
13 example, the most important reason that they
14 have indicated to us. And I am sure there
15 were other things that they were looking at.
16 I'm not particularly knowledgeable on all of
17 the metrics they have, but this is the one
18 that they relayed to us was the reason that
19 they were not renewing their contract.

20 Q Let's move on to paragraph 19.

21 A Yes.

22 Q And you indicate that the [REDACTED]

1 [REDACTED] was one of the advertisers --
2 I'm sorry, [REDACTED] and [REDACTED] excluded the NFL
3 Network as a competitor for national
4 advertising contracts. And, again, you
5 attribute it to because of its reduced
6 nationwide distribution. Do you have any
7 knowledge as to whether there were any other
8 reasons that they declined to do business with
9 the NFL?

10 A I do not.

11 Q What is your basis for attributing
12 it to the decline in nationwide distribution?

13 A With specifics to [REDACTED]
14 [REDACTED], as I talked about earlier,
15 advertisers -- many advertisers use that
16 approximate 50 million benchmark as a loose
17 benchmark for how they determine that they are
18 going to be involved in advertising. [REDACTED]
19 [REDACTED] was very carefully watching the
20 upward trends of the NFL Network and was
21 discussing with our representatives the
22 ability to come in and start to do advertising

1 with the NFL Network.

2 They liked the programming about
3 -- of football, they support it on other
4 networks, and they wanted to be able to get in
5 on that as we continued our rise.

6 At the moment, or in the period I
7 should say, of us negotiating that, the up-
8 front selling period, which takes place in and
9 around April through September of any given
10 year, the distribution issues were very much
11 in the press and caused the [REDACTED] folks to tell
12 us that they were not going to consider us at
13 this point because of the unsure nature of
14 distribution for the NFL Network.

15 Q Are you assuming that, or is that
16 something that you learned directly from the
17 [REDACTED] companies?

18 A That was something we learned
19 directly from the [REDACTED] company.

20 Q And what exactly did you learn
21 from them directly?

22 A That the changes in our

1 distribution growth and the unsure nature of
2 where our distribution was going to be with
3 this particular issue in Comcast had caused
4 them to put on hold any thoughts about using
5 the NFL Network for their advertising.

6 Q Do you have any personal knowledge
7 as to any other reasons why the [REDACTED]
8 companies might have excluded the NFL Network
9 for national advertising contract?

10 A At that particular time?

11 Q Correct.

12 A No.

13 Q Further in paragraph 19,
14 essentially you say the same thing regarding
15 [REDACTED] that they reduced advertising
16 expenditures, again attributing it due to
17 increased penetration. What is that based on?

18 A That is based on [REDACTED] telling
19 us, through their advertising agency in
20 Chicago, that distribution was a key element
21 in their decisionmaking process.

22 Q Did they tell you personally?

1 A They told us through -- no, they
2 told me -- I received that information through
3 our sales representative in Chicago.

4 Q Do you have any knowledge as to
5 whether there were any other reasons expressed
6 for [REDACTED] reducing its advertising
7 expenditures?

8 A No.

9 Q Earlier in your cross examination
10 a question was asked, and it was unclear to me
11 what the question was, although you responded
12 in the affirmative. And I need -- I would
13 like to just flesh it out a bit. I believe
14 the question was: is it significant that you
15 sell in areas where media buyers are located?
16 Is that a -- do you recall that question?

17 A I do.

18 Q And you responded yes. And
19 explain to me why it is significant that you
20 sell in areas where media buyers are located.

21 A The way I understood the question
22 is that if a -- if a group of media buyers

1 reside in an area and are unable to sample on
2 a daily basis the programming of the NFL
3 Network, because it may not be carried on a
4 particular cable system, we have to work twice
5 as hard to get them to understand the
6 programming.

7 If they are able to see Sports
8 Center, they understand what it is. Our news
9 and information show, we believe, has
10 wonderful traction and does good ratings, but
11 people don't understand that Total Access has
12 that ability, which happens to be the name of
13 the show.

14 So we have to work twice as hard
15 by getting them out into areas, posting them
16 at places, either at our offices or places
17 where we have access to DirecTV, but really
18 getting them familiar with the programming, so
19 they know what they are investing their
20 clients' money in. They like to have an
21 ability to talk about what the programming is
22 when asked.

1 Q Just so I understand, what exactly
2 is a media buyer?

3 A Media buyer is an individual that
4 is hired by the client that usually resides at
5 an advertising agency, whose sole
6 responsibility or primary responsibility is to
7 negotiate the value of the 30-second
8 commercials that the client will run. So they
9 will sit down and work with our sales team to
10 determine what the value is of the commercial,
11 and it is a negotiation.

12 Q Middlemen?

13 A Yes.

14 Q Okay. Could you turn to Comcast
15 Exhibit 506, please? That is a two-page
16 document with an e-mail string.

17 A Yes.

18 Q Do you have it?

19 A I do.

20 Q On page 2, there was some
21 discussion earlier about a sentence which --
22 or part of a sentence which says, "We have

1 significant advertisers that want out of their
2 commitments based on weak distribution." I am
3 just curious, the word "out" is in quotes.
4 This is an e-mail from you going back to 2006.
5 Do you have any idea what the significance is,
6 if any, of the word "out" being in quotes?

7 A Yes. Knowing how I communicate, I
8 would have been telling Mr. Marques in kind of
9 a tongue-and-cheek way that we have got people
10 asking us and challenging us all the time to
11 prove our value, and that we have to continue
12 to do that.

13 So while he is fighting what
14 appears to be his daily grind of being able to
15 drive distribution, we have got the same thing
16 going on with advertisers. They call us up
17 constantly and ask us, where are you, how are
18 you doing, what have you created for me. So
19 I was kind of responding in a very jovial way
20 to him about what we would be doing with each
21 to work with our products.

22 Q So is there any significance to

1 the fact that the word "out" is in quotes?

2 A Other than that, no, because I
3 would have -- imagine that I would have listed
4 for him specifically if we had reasons with
5 certain clients, because then he would have
6 been able to understand that.

7 MR. SCHONMAN: Thank you. Your
8 Honor, if you would indulge me, my colleague,
9 Elizabeth Mumaw, would like to ask a question
10 or two.

11 JUDGE SIPPEL: Certainly.

12 BY MS. MUMAW:

13 Q I'm Elizabeth Mumaw, co-counsel
14 for the Bureau. You talk in your testimony
15 about the importance of the Nielsen ratings on
16 advertising sales. Can you explain to me what
17 the Nielsen ratings are a measure of?

18 A Yes. Nielsen ratings, in its
19 broadest sense, are a measure of the people
20 who are actually watching the television show.
21 And then, from there, they have different
22 subsets as to how they categorize them, and

1 each one of those can be broken up in a number
2 of different ways that advertisers look at.

3 The most common ones are
4 demographics -- how many folks between the
5 ages of 18 and 49 happen to be watching a
6 particular show.

7 Q And do you have any knowledge of
8 what the ratings were before and after the
9 tiering, how they were affected?

10 A I would have to go back and look
11 at those in a period of time to determine by
12 hour or program to how they perform.

13 Q Do you have any general knowledge?

14 A I would think that our ratings
15 were -- it is hard to generalize it, because
16 each program runs at a different hour, and
17 different schedules and different programs
18 come in there. But I would say that we would
19 have talked about those ratings being constant
20 with our advertisers. We would have tried to
21 put together packages of advertising to give
22 them the same ratings delivery that they would

1 have had in their previous contracts with us,
2 or developed ones for them the first time.

3 Q Okay. In 2004, would the NFL have
4 had a greater potential for advertising
5 revenue if it were on the expanded basic
6 rather than the D2?

7 A I really can't answer that. I
8 wasn't with the NFL in 2004. I joined in
9 2006.

10 Q You answered the question for 2000
11 and -- oh, no, he didn't.

12 MR. SCHONMAN: Just a minute.

13 MS. MUMAW: Nothing further.

14 MR. SCHONMAN: That is it, Your
15 Honor.

16 MS. MUMAW: Thank you.

17 JUDGE SIPPEL: Any further
18 redirect?

19 MR. SCHMIDT: Yes, please, Your
20 Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. SCHMIDT:

1 Q Mr. Furman, when you said -- do
2 you recall a few minutes ago talking about
3 advertising increasing after the tiering
4 period?

5 A Yes.

6 Q Do you believe, based on your
7 experience, it would have increased even
8 further had Comcast not undertaken this
9 tiering?

10 A I think I had been -- or tried to
11 be very clear that the larger our distribution
12 the better it is to be able to go out and
13 offer them to clients. And that is important,
14 and advertisers -- and excuse the -- bigger is
15 better for them. So they like bigger ratings,
16 they like bigger footprints and bigger
17 opportunities.

18 Q Do you have an understanding as to
19 whether the NFL Network is available by any
20 carrier in major media markets?

21 A Yes, it is. It is available --
22 DirecTV is available across the entire United

1 States and brings us into every one of the
2 states in the U.S. and Hawaii.

3 MR. SCHMIDT: Thank you. Nothing
4 further.

5 JUDGE SIPPEL: Okay. I just have
6 one clarification question. On 506, at the
7 bottom, the question is, "Explain how D2 is
8 different from D1." Well, I have the same
9 question I guess. D2 -- I understand what
10 that is, and we have talked about that. That
11 has got the [REDACTED], and the basic
12 expanded has the [REDACTED], whatever. But
13 where -- is D1 -- what does D1 signify? What
14 does that -- what does it --

15 THE WITNESS: Your Honor, at the
16 time I didn't know, so I was asking what the
17 differences were, because this was relatively
18 new information for me. So I didn't know what
19 D2 or D1 was, and I was just trying to find at
20 the very least what we -- what the numbers of
21 homes were, so I could at least start to get
22 my arms around what that meant in size and

1 scope for us. But I clearly didn't understand
2 the difference between D1 and D2 and was
3 asking the question.

4 JUDGE SIPPEL: Okay. Well, I
5 wasn't trying to test -- can you explain to me
6 -- I don't know -- I am -- I will take an
7 answer from anybody. What is the difference
8 between D2 and D1?

9 MR. CARROLL: Your Honor, D1 is a
10 more penetrated digital level. D stands for
11 digital.

12 JUDGE SIPPEL: Yes.

13 MR. CARROLL: It is a digital
14 level that is more penetrated than D2. And
15 '04 contract referenced D2. D2's definition
16 is the second most penetrated digital level,
17 hence D2. D1 would be the first most
18 penetrated digital level.

19 JUDGE SIPPEL: Well, but that is
20 not the expanded basic?

21 MR. CARROLL: No.

22 JUDGE SIPPEL: That is --

1 MR. CARROLL: It is digital, but
2 with more subscribers than D2, and analog is
3 -- to get expanded basic, you go into the
4 analog world. And we will be happy -- since
5 I am probably not -- should not be giving
6 evidence on the record, I am happy to answer
7 Your Honor's questions. But I think through
8 subsequent witnesses we can have somebody
9 confirm that for you, and you can have any
10 followup questions, if Your Honor has, on
11 that.

12 JUDGE SIPPEL: All right. Well,
13 thank you. Thank you. I just want to be sure
14 -- I was trying to get the clarification. You
15 gave it to me, and so D -- the numbers we have
16 been talking about here -- again, I am just
17 trying to get a feel here -- D2 has been in
18 the [REDACTED] number. I have heard that
19 equated. What would a D1 penetration be?

20 MR. CARROLL: You have now
21 exhausted my information. I can't answer that
22 question, but I can undertake to get an answer

1 for you.

2 JUDGE SIPPEL: All right. Well,

3 we'll find out.

4 MR. CARROLL: Okay.

5 JUDGE SIPPEL: We'll find out. Do

6 you want to shed any light on that, Mr.

7 Schmidt?

8 MR. SCHMIDT: I do not want to try

9 to explain Comcast numbers.

10 JUDGE SIPPEL: Okay. Well, here,

11 up above for Mr. Shaw, he said it's digital

12 plus [REDACTED] HH instead of [REDACTED] are

13 getting rid of D2 soon. Well, I take it that

14 --

15 MR. CARROLL: HH would be

16 households. I would guess that that reference

17 has Mr. Shaw indicating that D1 might be in

18 the [REDACTED], but I can't confirm that

19 myself.

20 JUDGE SIPPEL: Okay. And then he

21 says, "They are getting rid of D2 soon." And

22 this is November 2006. This means that --

1 this is what you're talking about, you're off
2 of D2, and we are going to put you back up
3 upstairs on the expensive one.

4 MR. CARROLL: I don't even have
5 the exhibit in front of me, so I probably
6 shouldn't say.

7 JUDGE SIPPEL: Do you have any
8 idea what that is? You have been testifying
9 on this document?

10 THE WITNESS: I do not have any
11 idea about that.

12 JUDGE SIPPEL: Do you know what I
13 am asking?

14 THE WITNESS: Yes, I --

15 JUDGE SIPPEL: This says -- this
16 little phrase down here "they are getting rid
17 of D2 soon."

18 THE WITNESS: Yes, I -- Judge, I
19 don't know if those numbers are correct, nor
20 would I know --

21 JUDGE SIPPEL: Well, forget about
22 the numbers. I know we are off the numbers

1 now. Just what thought is trying to be
2 transmitted from Mr. Shaw that they are
3 getting rid of D2 soon?

4 THE WITNESS: I wouldn't know what
5 he was trying to say there.

6 JUDGE SIPPEL: All right. I don't
7 either. Okay. All right. We'll pick it up
8 later. Interesting.

9 Anybody have anything further?

10 MR. SCHMIDT: No, Your Honor.

11 JUDGE SIPPEL: No, I don't either.

12 MR. PEREZ-MARQUES: No, Your
13 Honor.

14 JUDGE SIPPEL: Okay. We are going
15 to close down, then, for the day. We will be
16 back in at 9:30 tomorrow. Who will be the
17 first witness we are going to have?

18 MR. CARROLL: Would that be Mr.
19 Tagliabue?

20 MR. SCHMIDT: No.

21 MR. CARROLL: Not ready first
22 thing in the morning?

1 MR. SCHMIDT: Well, yes, yes.
2 I've got my days out of order.
3 MR. CARROLL: That would be Mr.
4 Tagliabue first thing in the morning.
5 JUDGE SIPPEL: He is coming in at
6 9:30?
7 MR. CARROLL: Yes.
8 JUDGE SIPPEL: All right. Now, do
9 we have the same situation with Mr. Tagliabue?
10 I mean, he has got a very short written
11 statement. Is he going to be going into
12 things that we have to excuse the public from
13 his testimony, or can we -- can we let him
14 talk to everybody?
15 MR. SCHMIDT: Not on our side,
16 Your Honor. It is only if he is asked
17 questions about things other than in his
18 written direct that I think that might call
19 for it, but, as we understand his testimony,
20 no.
21 JUDGE SIPPEL: All right.
22 MR. CARROLL: Well, if they stick

1 to that written statement, he might be a
2 pretty short witness, and that might work,
3 Your Honor. But --

4 JUDGE SIPPEL: All right. Well,
5 let's see what happens.

6 MR. CARROLL: Yes. Thank you.

7 JUDGE SIPPEL: We are in recess
8 until 9:30 tomorrow morning.

9 I will warn the witness, you are
10 not to talk about your testimony to any other
11 witness until this case is over. You can talk
12 to lawyers, of course.

13 THE WITNESS: Thank you.

14 JUDGE SIPPEL: All right. We are
15 in recess. Off the record. Thank you.

16 (Whereupon, at 4:48 p.m., the
17 proceedings in the foregoing
18 matter went off the record, to
19 reconvene at 9:30 a.m., the
20 following day.)

21

22